

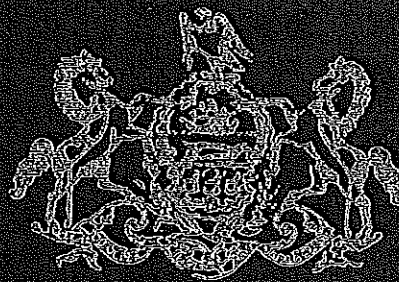
EXHIBIT “1”

Legislative Budget and Finance Committee

A JOINT COMMITTEE OF THE PENNSYLVANIA GENERAL ASSEMBLY

PERFORMANCE AUDIT

STATE BOARD OF FUNERAL DIRECTORS (Volume I)



OFFICES: ROOM 400, FINANCE BUILDING, HARRISBURG—TEL: (717) 783-1600
MAILING ADDRESS: P.O. BOX 6737, HARRISBURG, PA 17105-8737

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Legislative Budget and Finance Committee

A JOINT COMMITTEE OF THE PENNSYLVANIA GENERAL ASSEMBLY

OFFICES: Room 400 • Finance Building • Harrisburg • Tel: (717) 783-1600 • Facsimile: (717) 787-5487

MAILING ADDRESS: P.O. Box 8737 • Harrisburg, PA 17105-8737

EXECUTIVE DIRECTOR
Phillip R. Durgin

CHIEF ANALYST
John H. Rowe, Jr.

PERFORMANCE AUDIT

STATE BOARD OF FUNERAL DIRECTORS (Volume I)

January 1994

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CHAPTER I - INTRODUCTION

The State Board of Funeral Directors^{1/} is scheduled to terminate on December 31, 1994, under two sunset bills introduced in the General Assembly during the FY 1993-94 legislative session. Under a third sunset bill, the Board would terminate on December 31, 1995. The Legislative Budget and Finance Committee undertook this performance audit to satisfy audit requirements contained in the sunset bills in the event one of the bills is enacted. The results of the audit will be referred to the appropriate standing committees of the General Assembly for their review and consideration as a standard LB&FC performance audit report whether or not a sunset bill is passed.^{2/}

Audit Objectives

1. To determine if Board operations are consistent with the objectives intended by the General Assembly.
2. To determine if termination of the Board would significantly harm or endanger the public health, safety, or welfare and if there is a demonstrated need, based on service to the public, for its continuing existence.
3. To determine if the Board's operation has been in the public interest and if it has encouraged public input and participation in its deliberations and decision-making processes.
4. To determine if there is unnecessary overlap or duplication by other agencies that would permit termination of the Board and if the Board's services may be provided in an alternate, less restrictive manner.

^{1/}Also referred to in this report as the Board or the Funeral Directors Board.

^{2/}Note: This is a two-volume report. Volume I examines the need for state regulation of the funeral directing profession and the Board's performance in such areas as licensing, complaint handling, funeral home inspections, and public information and consumer education. Volume II presents the results of an evaluation of the adequacy of pre-need funeral regulation in the Commonwealth.

CHAPTER II - FINDINGS AND RECOMMENDATIONS

FINDING A

STATE REGULATION OF THE FUNERAL DIRECTING PROFESSION AND OTHER SEGMENTS OF THE FUNERAL INDUSTRY IS IMPORTANT FOR CONSUMER PROTECTION PURPOSES

SUMMARY

The State Board of Funeral Directors is responsible for regulating persons and businesses that engage in the preparation and disposition of human remains. When originally established, the Board's primary purpose was to safeguard public health against the spread of communicable diseases. However, advances in mortuary science and health regulation have greatly minimized the risks involved in disposing of human remains. For example, universal precautions for preventing the transmission of infectious diseases are widely accepted and implemented within the industry. Also, responsibility for controlling the spread of contagious diseases is now centralized under the regulatory jurisdiction of agencies such as the U.S. Center for Disease Control (CDC), the Occupational Safety and Health Administration (OSHA), and state public health departments. The Board's functions do not, therefore, appear to be essential to protect public health and safety.

State regulation of the funeral directing profession does, however, serve an important consumer protection purpose. Funerals are high-cost transactions in which consumers are especially vulnerable due to the combined effects of emotional trauma, lack of information, and extreme time pressures. In such an environment, state regulation is important to protect consumers from unethical and deceptive practices. State regulation also ensures minimum competency of funeral practitioners and controls who is permitted to offer funeral goods and services to the public.

In recent years, many states have shifted the focus of their regulatory efforts from public health to consumer protection. This change has not yet occurred in Pennsylvania, due at least in part to the outdated law under which the Board operates. The Board also regulates only one part of a larger industry that includes cemeterians, crematory operators, and third-party sellers of funeral goods and merchandise. These segments of the industry are largely unregulated at this time.

While governmental control and oversight of the funeral industry appears necessary, such regulation is not best provided through a board comprised primarily of funeral directors. Regulation may be better accomplished by replacing the current State Board of Funeral Directors with a broader-based board responsible for oversight of the larger funeral service industry.

This disadvantaged position can result in substantial financial harm to consumers who lack adequate knowledge about funeral prices, legal requirements, and the service, merchandise, and price options available to them. Investigations conducted by the Federal Trade Commission have clearly documented the problems and abuses which consumers can face in arranging and paying for a funeral. Although not found to be pervasive within the industry, the FTC documented deceptive and unethical practices involving misrepresentations, deceptive merchandising techniques, withholding of price information, cash advance items, prepaid funeral arrangements, and market restraints. The FTC concluded that these practices can pose a substantial threat to consumers.

Need for Regulation to Protect Health and Safety

State licensure of funeral directors began as part of the public health movement in the late 1800s. At that time, the primary concern was to establish standards for preserving dead human bodies to prevent the spread of communicable diseases. Industry historians have cited "the public health concerns of the time, the quasi-scientific/medical character of embalming, and the social importance of carrying out post-death activities" as factors used to persuade state legislatures to license practitioners of funeral directing and embalming.^{8/}

Pennsylvania initiated licensure requirements in 1895 through the establishment of a State Board of Undertakers. This Board was responsible for examining and licensing undertakers to "provide for the better protection of life and health by diminishing the danger from infections and contagious diseases."

In the intervening years, advances in mortuary science and health regulation have virtually eliminated the public health risks

^{8/}The History of American Funeral Directing, R. Habenstein and W. Lamers, 1962.

associated with preparation and disposition of the deceased. Universal precautions to prevent the transmission of infectious diseases are widely accepted and implemented within the industry. Also, responsibility for controlling the spread of contagious diseases has been centralized under the regulatory jurisdiction of such agencies as the U.S. Center for Disease Control (CDC), the Occupational Safety and Health Administration (OSHA), and state public health departments.

Current medical opinion is that dead bodies pose little or no risk to the general public and that embalming is not necessary to protect public health. According to physicians from the Center for Disease Control, the need for embalming as a sanitary and public health measure has been greatly exaggerated. According to one physician, "though there is a common sense need for safeguards against the unpleasant side effects that may attend the process of decomposition, there is virtually no public health necessity for embalming."

The PA Department of Health's position on this matter is similar:

- LB&FC Question: Does the deceased human body pose a public health risk?

Health Department Position: "It is the Department's position that in fact the human body can pose a public health risk but that risk is not a consequence of that individual being deceased. Rather, it is a consequence of the health status of the individual, which cannot always be known. It is precisely in recognition of such a public health threat that the Center for Disease Control has developed universal precautions. Such precautions are recommended, regardless of setting, for anyone handling a body."

- LB&FC Question: Does embalming serve to prevent or reduce any potential health risks that may be associated with disease being transmitted by human remains?

Health Department Position: "The Department does not believe that embalming serves a public health purpose. Obviously, embalming is not required as a means of preparing a human body for interment. Of note is the fact that specific

religious groups within this country do not embalm bodies, and the public health has not been threatened as a result. Additionally, European countries do not routinely embalm, also without a threat to the public."

While the dead human body poses minimal risks to the general public, there are risks for those who work in the industry. According to OSHA, these risks relate to the potential harm from improperly handling and disposing of infectious waste. Mortuary service workers such as embalmers who may be exposed to human bodily fluids are especially at risk. Funeral service workers also use potentially hazardous chemicals such as formaldehyde. OSHA regulations establish specific requirements for infectious disease control programs which must be in effect whenever there is a danger of the spread of AIDS, Hepatitis B, or other communicable diseases.^{9/} These regulations are quite extensive covering personal protective equipment, sanitation, and waste disposal.

To reduce health risks, funeral service workers are also required to exercise "universal precautions." In 1987, the Center for Disease Control published a document entitled Recommendations for Prevention of HIV Transmission in Health-Care Settings. These guidelines apply to persons whose activities involve contact with patients or with blood or other body fluids from patients in health care settings. The document recommends precautions referred to as "universal blood and body-fluid precautions" or "universal precautions." Examples of recommended precautions include using barrier precautions to prevent skin and mucous-membrane exposure when contact with blood or other body fluids is anticipated, and washing hands or other skin surfaces immediately if contaminated with blood or body fluids.

A special section of the document is entitled "Precautions for Autopsies or Morticians' Services." This section states that,

^{9/}OSHA Instruction CPL-2-2.44A, August 15, 1988.

in addition to the universal blood and body-fluid precautions, additional precautions should be used by persons performing or assisting in postmortem procedures. These precautions also include wearing gloves, masks, protective eyewear, gowns, and water-proof aprons and decontaminating all instruments and surfaces used during postmortem procedures with an appropriate chemical germicide.

These precautionary measures appear to be effective. According to the CDC, there have been no reported cases of Hepatitis B or AIDS being transmitted to a funeral service worker or member of the general public by a corpse or residue therefrom. In information supplied to the Colorado Department of Regulatory Agencies in 1990, the Center for Disease Control reported that "the incidents of transmission of AIDS by a corpse or any of the fluids, clothing, or equipment used in connection with it are theoretically possible but are extraordinarily rare." The CDC also reported that once the human body cools, the blood-borne pathogens which it may carry usually die quickly.

We contacted the CDC in June 1993 to obtain updated information on this issue. A CDC physician reported that there are no documented cases of occupational transmission of the HIV virus to a funeral industry practitioner. This physician also expressed the opinion that the universal precautions are sufficient to prevent transmission of the virus to funeral service workers.

Despite these work place regulations and universal precautions, health and safety issues continue to be a serious concern for those in the industry. For example, in response to an LB&FC audit questionnaire, the PA Funeral Directors Association stated:

We believe that with the ever increasing concern over communicable diseases, the requirements for the disposing of hazardous waste and other materials, and . . . that licensed and effectively policed funeral directors are an absolute necessity.

It appears, however, that adequate precautions and laws and regulations administered by various state and federal agencies are in place to address these health risks. Many public health laws and regulations deal with the control of infectious disease transmission and the safe handling and disposal of hazardous and infectious wastes. Moreover, there is no epidemiological evidence showing funeral homes and funeral service workers as a source of disease transmission. In this regulatory environment, a state board such as the Funeral Directors Board does not appear to perform functions that are essential to protecting public health and safety.

The Changing Focus of Public Regulation of the Funeral Industry

Regulation of the funeral industry was initiated at a time when safeguarding public health was the major focus and interest of public regulation. In recent years, however, concerns about protecting the public from the spread of contagious diseases have shifted to concerns for the welfare of consumers.

During the 1970s, concerns over business practices, costs, and allegations of fraud and deceptive practices in the funeral industry gave rise to an extensive investigation of funeral industry practices by the Federal Trade Commission and the adoption in 1984 of the FTC Funeral Rule. The Funeral Rule is a consumer protection trade regulation that requires funeral directors to provide specific price information to consumers, prohibits misrepresentations about the need for particular services or merchandise, and prohibits required purchases (i.e., conditioning the purchase of one item on the purchase of another item). Adoption of the Funeral Rule signaled a change in regulatory focus that was simultaneously occurring in many states. (See also Finding G.)

Consistent with the FTC's Funeral Rule, many states have changed the focus of their regulatory efforts from public health to consumer protection. LB&FC staff examined reports on sunset

Need for Expanding Funeral Regulation in Pennsylvania to Cover Other Providers of Funeral Goods and Services

It is generally accepted that state regulation and licensing of professions and vocations is to be carried out only where reasonably necessary to protect the health, safety, or welfare of the public. Where regulation is reasonably necessary, government regulation in the form of full licensure or other restrictions on the professions or vocations should be retained or adopted. While the threat to public health and safety from the practice of funeral directing appears minimal, continued and expanded regulation of the funeral industry in Pennsylvania appears necessary for consumer protection purposes.

The Funeral Industry. The term "funeral industry" can be used to mean all persons and enterprises that engage in the retail sale of goods and services used during the disposition of human remains. Funeral directors are the primary occupational grouping within this industry. Other groups, however, provide funeral goods and services. These include cemetery and crematory owners and operators, sellers of funeral merchandise (e.g., caskets, monuments, and vaults), sellers of pre-need funeral contracts, and salespersons who work for these groups. Others such as persons who transport dead bodies for compensation, counsellors who specialize in grief counseling, and florists are also part of the industry.

The State Board of Funeral Directors is responsible for regulating only one segment of this industry. The Board deals with other segments of the industry only when their activities infringe on or conflict with areas legally reserved for funeral directors. Some, but not all, of the other vendors are regulated by other agencies.

In Pennsylvania, as in other states, funeral homes tend to be family-owned and operated. According to the National Funeral

Directors Association, the funeral industry is comprised primarily of small family businesses, passed down from generation to generation. Until fairly recently, well-established divisions existed between the various segments of the funeral industry and the goods and services they could offer. Funeral directors competed only among themselves. Cemeteries only sold plots, headstones, and containment structures, and cremation was relatively rare. According to the Board's former chief prosecutor:

Under this system, the funeral directors tended to carve out geographic, social, or ethnic business areas for themselves. This practice, plus the rules limiting expansion and branches, tended to provide their businesses with substantial protection against competition.

The divisions between the various segments of the industry have essentially been removed. The FTC's promulgation of regulations governing the sale of funeral goods and services in 1984 was the single most influential factor in this change. The FTC's Funeral Rule opened up the funeral services market and eliminated the funeral directors' former monopoly on the sale of caskets and certain other goods. Thus, funeral goods, such as caskets, began to be marketed by cemeteries and other vendors. The FTC's regulations also promoted competition by requiring vendors to maintain price lists and provide price information over the telephone. At the same time, crematory operators began to more actively market cremation services as a low-cost alternative to traditional in-ground burials.

Also, the Commonwealth Court invalidated long-standing rules that prohibited funeral directors from owning or being employed by cemeteries.^{10/} The industry continues to change as more funeral directors have obtained the capability to perform cremations and

^{10/}See, McKinley v. State Board of Funeral Directors, 313 A.2d 180 (Pa. Commonwealth Ct. 1973); Recupero v. State Board of Funeral Directors, 551 A.2d 7 (Pa. Commonwealth Ct. 1988).

become licensed to sell insurance policies to fund pre-need contracts. Cemeterians and crematory operators are also competing more aggressively for a share of the pre-need goods and services market. (The regulation of pre-need funeral contracts is dealt with extensively in Volume II of this report.)

In short, the funeral industry is becoming more diverse and the number of non-funeral director vendors competing for a share of the funeral services market is increasing. Funeral directors believe that these vendors, some of whom are substantially unregulated, are encroaching in areas that should be restricted to licensed members of their profession.

Further significant changes in the funeral services industry seem likely. At the national level, several large firms have entered the marketplace. These firms seek to consolidate or vertically integrate the market by purchasing funeral homes, cemeteries, casket operations, monument retailers, pre-need insurance subsidiaries, and floral outlets. The Chicago Corporation, a private, for-profit securities brokerage firm, reports that:^{11/}

Key strategies and tactics adopted by the more aggressive companies include development of funeral home and cemetery combinations, cross-selling of prearranged funerals and cemetery space, and regional clustering of operations The funeral and cemetery combination trend is also precipitating a convergence of different sub-groups within the death care industry. Combination properties, which typically feature enlarged casket showrooms, florists, and monument and memorial product dealers, fulfill a market need for one-stop shopping for the full range of death care services and products.

These developments will inevitably complicate state regulation of the funeral industry as the lines between the various segments of the industry become further blurred.

^{11/}The Death Care Industry/Company Report, The Chicago Corporation, March 1993. (As part of its consumer products and services, the Chicago Corporation prepares industry and market analyses.)

Options for Regulating the Funeral Industry. Nationally, the focus of state regulation of funeral service is changing from protection of public health to consumer protection. This change is not reflected in Pennsylvania's statute. Moreover, the current Funeral Director Law and Board structure are not well suited to regulating what amounts to a new and evolving funeral services industry. A comprehensive update and revision of the law, as well as consideration of various options for regulating the funeral directing profession and other components of the industry, appear necessary.

No matter what Board structure is ultimately decided upon, the Funeral Director Law needs to be rewritten. The current Board's regulation of the funeral directing profession, including adjudication of complaints, is complicated by a statute that is outdated and in need of comprehensive revision. The Funeral Director Law, which was enacted in 1951 has been amended on several occasions but is essentially the same in purpose and scope as laws dating to the 1930s.

As discussed throughout this report, we found that many sections of the law are ambiguous and outdated and that, overall, it does not provide an adequate basis for regulating today's funeral industry. Strong sentiment also exists among Board members and licensees for a comprehensive review and update of the law. One Board member stated:

The law we are charged to uphold, which must be applied in regulating this industry, is woefully outdated and is in need of SERIOUS REVISION. Some aspects of the law as now imposed are almost beyond enforcing because of changes which have occurred in educational institutions, in the industry itself, and/or in the expectation of the general population. Some aspects of this law, as enforced, are unnecessary, self-serving for funeral directors, and add higher costs to funerals.

A statement provided to LB&FC staff by the Board notes that a comprehensive revision of the law would be in the best interests

of Commonwealth citizens as well as those serving in the profession. A list of suggested statutory changes developed by the Funeral Directors Board is in Appendix D.

There are several options for regulating the funeral industry that could be considered as part of a comprehensive review of the Funeral Director Law. One option would be to amend the law to deregulate the industry. However, as discussed in this report, the funeral industry is subject to many misleading and deceptive practices. The risks such practices pose to consumers appear serious enough to warrant some level of continued state intervention. Continued state regulation also appears in the public interest to ensure minimum competency of funeral practitioners and to control who is and is not permitted to provide funeral goods and services to the public.

A second option would be to reassign aspects of the Board's regulatory responsibilities to other state agencies (e.g., the Department of Health, Office of Attorney General, and others). This alternative, however, does not provide the visibility and state-wide focus on funeral-related matters that is present in a single board structure. The board structure also provides a forum for dialogue between consumers and various segments of the funeral industry on appropriate standards, business practices, and procedures for complaint resolution.

Another option would be to retain the current Board structure. However, as presently constituted, the Board regulates and receives input from only one segment of the funeral industry. In implementing the Funeral Director Law, the Board focuses its efforts primarily on administering the funeral director licensing system. The Board has not actively promoted adherence to the FTC's Funeral Rule or adequately dealt with important consumer issues such as pre-need funeral contracts and casket handling fees.

Department of Banking and Finance) with the regulation of pre-need funeral contracts (previously under the Department of Insurance) and placed them under a newly created Board of Funeral and Cemetery Services in the Department of Banking and Finance. This Board consists of two cemetery owners or operators, two independent funeral directors and three consumer members (one of whom must be at least 60 years old).

RECOMMENDATION

1. *The General Assembly should consider carrying out a comprehensive update and revision of the Funeral Director Law. As part of this revision, the General Assembly should consider replacing the current State Board of Funeral Directors with a broader-based board responsible for regulation of the funeral service industry. Such a "funeral industry oversight board" should include consumer members and members drawn from all major segments of the industry, including funeral directors, crematory operators, cemeterians, and third-party sellers of funeral merchandise and pre-need funeral contracts.*

(See also Recommendation 1 in Finding B which recommends that the Board consist of a majority of consumer members.)

FINDING B

ALTHOUGH THERE ARE OPPORTUNITIES FOR INPUT FROM THE PUBLIC, PARTICIPATION IN BOARD AFFAIRS COMES PRIMARILY FROM THE STATE FUNERAL DIRECTORS ASSOCIATION AND OTHERS WITH A DIRECT INTEREST IN THE BOARD

SUMMARY

The State Board of Funeral Directors holds regular public meetings, complies with the Sunshine Act, and adheres to regulatory review requirements. Thus, there are opportunities for public input and participation in Board affairs. We found, however, that input and participation comes almost exclusively from funeral directors and the Pennsylvania Funeral Directors Association (PFDA). The presence of five funeral directors (a majority) on the Board and a strong and active statewide association account for the industry's predominance in Board activities. While the Board also includes two public members, the BP&OA Commissioner, and a representative from the Bureau of Consumer Protection, there is virtually no direct public input or involvement from consumers.

Regulatory bodies are sometimes "captured" by the industries they are intended to regulate. Some persons, citing examples such as "casket handling fees" (see Finding H) and restrictive ownership provisions (see Finding P) believe that this may be the case with the Funeral Directors Board. A Federal Trade Commission official has suggested that state funeral regulatory boards should have a minority of funeral director members with the majority being public members. Our survey of the member composition of funeral boards in other states found, however, that industry representatives remain in the majority in most states. Exceptions are California which requires that three of its five member State Board of Funeral Directors and Embalmers be appointed from the public, and Texas which put public members in the majority on its Funeral Service Commission as a result of a 1991 sunset evaluation.

DISCUSSION**Board Composition**

The State Board of Funeral Directors is made up of nine members. They include five licensed funeral directors, two public members, the Director of the Office of Attorney General's Bureau of Consumer Protection (or designee), and the Commissioner of the

Bureau of Professional and Occupational Affairs (BP&OA).^{1/} The funeral director members must have at least 10 years experience.

Although the majority of the Board's members are licensed funeral directors, the two public members, the Bureau of Consumer Protection member, and the Commissioner of the Bureau of Professional and Occupational Affairs can represent the interests of the general public in Board proceedings. Both public member positions are currently filled^{2/} and both regularly attend Board meetings. One of the public members was designated Board Chair in April 1993.

In a report^{3/} on funeral industry practices, the presiding officer of the Federal Trade Commission (FTC) encouraged increasing the number of public members on funeral boards:

While it would be relatively difficult to regulate any industry without the advice of practitioners, it is asking for a largeness of view and spirit not generally prevalent to hope that practitioners would act in the public interest on a long-term basis. The states would be well advised to have a minority of funeral director members with the balance being public members of one sort or another.

A recognized authority on occupational licensing, Benjamin Shimberg, also notes that licensing boards are typically made up predominantly of members of the licensed professions, often with ties to professional associations. He states^{4/} that:

This process has tended to produce boards that are rather homogeneous in their makeup and strongly oriented toward preserving the status quo. Those appointed are likely to reflect the attitudes, values, and policy

^{1/}Act 1993-48, effective September 1, 1993, authorizes the Commissioner of the BP&OA to designate a member of the BP&OA staff as his representative to boards of which he is a member.

^{2/}There were no vacancies on the Board as of September 1993.

^{3/}Funeral Industry Practices, Final Staff Report to the FTC and Proposed Trade Regulation Rule, June 1978.

^{4/}Benjamin Shimberg, Occupational Licensing: A Public Perspective, Educational Testing Service, Princeton, New Jersey, 1982, p. 163.

amendments to regulations in the Pennsylvania Bulletin on April 8, 1989, relating to prepaid burial accounts. Interested persons were invited to comment on the proposed rulemaking. The Board received several comments and, as a result, amended the proposed regulations. Final rulemaking was published in the Pennsylvania Bulletin on November 4, 1989.

On December 8, 1990, the Board proposed general revisions to its licensing and internship regulations, health laws and regulations, and unprofessional conduct. This proposal was published in the Pennsylvania Bulletin and interested persons were invited to comment. The Board received several comments from funeral director associations, the House Professional Licensure Committee, the Senate Consumer Protection and Professional Licensure Committee, the Independent Regulatory Review Commission, and others. The Board made several changes to the proposed regulations pursuant to these comments. The regulations were published in final form on December 7, 1991.

In 1991 the Board increased its license renewal fees. Although public comment was solicited, the Board received no comments. The increase went into effect with the 1991-93 biennial licensing period.

While in compliance with the public notice and input requirements, the Board has, in some cases, changed its regulatory requirements through waivers rather than through amendments to its regulations. For example, the Board used waivers to reduce the requirements related to the subject matter to be covered by interns. This is discussed further in Finding L.

Public and Industry Involvement in Board Proceedings

As discussed above, the Board adheres to the Sunshine Act and regulatory review requirements, includes public members, and holds frequent public meetings. Despite these opportunities, industry

representatives and concerns appear to predominate Board proceedings.

Regulatory bodies, whether state or federal, are sometimes "captured" by the industry they are intended to regulate. There are indications that this may be the case with the Funeral Directors Board. The Board's former chief prosecutor believes the Board exercises little or no control over the industry and serves to advance the interests of the profession, often at the expense of the public. The former chief prosecutor offered as an example the practice of some funeral directors charging consumers an additional fee when they do not purchase their casket from the funeral director (referred to as a "casket handling fee").^{6/} He believes a more consumer-oriented Board would prohibit these fees, but the current Board has not discussed the issue.

Our review of Board meeting minutes shows that Board licensees and their attorneys, and the PFDA are the primary participants at Board meetings. PFDA representatives are typically asked to make a presentation during the public information portion of Board meetings. These persons also routinely provide comments and input during other portions of the meetings. At the December 2, 1992, meeting attended by LB&FC staff the former Board chairman introduced the PFDA counsel as "the public."

While Board meeting agendas include a public input period, the Board's administrative assistant could not recall the Board receiving any consumer input during these periods during her two-and-one-half-year tenure. A number of Board licensees responding to an LB&FC audit questionnaire expressed concerns about a lack of public awareness of the Board and the lack of public input to the Board. Among the comments submitted:

^{6/}The practice of charging casket handling fees is addressed in Finding H.

- I do not feel the public is aware of the actual board. The board is more influenced by funeral directors than by the public.
- The public has no idea we, as funeral directors, have a direct governing body over us and many funeral directors do not know when and where the board meets. Therefore, how can any public input be gotten.
- I as a funeral director don't know when the board meets, what action if any is taken at these meetings. So how would the public have any knowledge that these meetings even exist?
- Aside from a service related complaint, I do not know if the board hears from the public or if the public knows that there is even an oversight board.
- Public has NO knowledge of Board and state regulating. If public had such knowledge they then could contact Board members and have some input. Public now doesn't even know such a Board exists!
- How can the public have input if the funeral directors don't even know what's happening?
- I don't know how the public would have the opportunity to voice their thoughts since the date and place of meeting is not well publicized.
- They [the public] don't know a board exists.

RECOMMENDATIONS

1. *The General Assembly should consider amending the Funeral Director Law to:*
 - *require that public members constitute a majority on the State Board of Funeral Directors (or a renamed state board responsible for overall regulation of the funeral industry), and*
 - *establish four-year terms for Board members with a two-term limit.*
2. *The Board should develop public information materials to enhance public/consumer awareness of the Board and its activities. (Further recommendations related to public and consumer information efforts are presented in Finding I.)*
3. *The Board should follow through with its plans to develop a periodic newsletter for distribution to its licensees.*

FINDING K**MANY FUNERAL HOMES ARE NOT BEING INSPECTED ON A REGULAR BASIS**

SUMMARY

The Funeral Director Law requires that the Board appoint persons to inspect funeral establishments and investigate complaints. The law does not specify the purpose or frequency of these inspections, but Board regulations state that newly built or newly owned funeral homes must be inspected before beginning operation. The funeral home inspection program also has an internal goal to inspect each funeral establishment annually. These inspections are carried out by mortuary inspectors assigned to the Law Enforcement Division of the Bureau of Professional and Occupational Affairs (BP&OA).

We found that Pennsylvania funeral homes are being inspected on an irregular basis. Available records show that 50 percent or less of the state's 1,900 funeral homes receive annual inspections. Inspection files also show that some homes are inspected more than once a year while others have not been inspected for five years or more.

Several factors contribute to problems in the inspection program: (1) inspections are not conducted according to a formal plan or schedule, (2) basic program management information is not available, (3) the inspection program is understaffed and one of the three authorized inspector positions (Philadelphia region) was recently vacant for nearly one year, (4) the requirement that inspectors be licensed funeral directors with ten years experience makes recruitment difficult and, with funeral directors inspecting funeral directors, can compromise the perceived integrity of the process, (5) there is no written inspection policy and few written guidelines on the purpose, objectives and procedure for inspections and violation reinspections, (6) there is no formal training program for mortuary inspectors, (7) inspections focus on routine facility, equipment, and administrative requirements rather than the key areas in which consumers may be vulnerable, and (8) the inspectors' authority to examine licensee business records is unclear. These deficiencies need to be addressed to make funeral home inspections a more effective part of state funeral regulation in Pennsylvania.

DISCUSSION

Facilities licensed by state government are usually subject to periodic inspections by state personnel. In the case of professional licensing boards, staff of the BP&OA's Law Enforcement

Division inspect facilities operated by certain licensees (e.g., barbershops, cosmetology shops, and pharmacies). Mortuary inspectors assigned to the BP&OA's Law Enforcement Division are responsible for inspecting the Commonwealth's approximately 1,900 funeral homes.^{1/}

The Funeral Home Inspection Program

The Funeral Director Law, 63 P.S. §479.16(b), provides for the appointment of inspectors who:

. . . shall be empowered to serve all processes and papers of the board, and shall have the right of entry into any place, where the business or profession of funeral directing is carried on or advertised as being carried on, for the purpose of inspection and for the investigation of complaints coming before the board and for such other matters as the board may direct.

The law requires that these inspectors must be licensed funeral directors who have been actively engaged in the funeral directing profession for at least ten years.

While generally providing for inspectors and an inspection function, the law does not address the specific purpose of funeral home inspections or how frequently they are to be carried out. Board regulations provide only that newly built or newly owned funeral establishments must receive Board inspection and approval before beginning operation.

The Board's inspection function is performed by three mortuary inspectors in the BP&OA's Law Enforcement Division. These inspectors work out of regional offices in Philadelphia, Scranton, and Pittsburgh. Although unwritten, the reported goal of the

^{1/}This number includes about 1,064 business class licenses (i.e., corporations, partnerships, restricted corporations, branch offices, widows, and estate) and 816 sole proprietorships.

funeral home inspection program is to conduct a facility compliance inspection of each funeral establishment on an annual basis.

The costs of the funeral home inspection program are included in the Board's law enforcement budget. In FY 1992-93, the Board reimbursed the BP&OA's Law Enforcement Division \$116,787 for inspection and investigation functions. While it is not possible to identify the precise amount of this total attributable to the inspection program, it is at least \$54,958 based on inspectors' salaries, benefits, and expenses.

Other governmental agencies also inspect funeral homes. These include the U.S. Occupational Safety and Health Administration, the PA Department of Labor and Industry, the U.S. Environmental Protection Agency, the PA Department of Environmental Resources, and the Federal Trade Commission. These agencies do not, however, conduct inspections on a routine basis. Rather, these agencies generally do inspections only in response to complaints of violations of state and federal laws or regulations.

Nature of Funeral Home Inspections

Inspections by the BP&OA's mortuary inspectors focus on facility, equipment, and administrative requirements. There are no written procedure manuals or guidelines for the mortuary inspectors to follow. During a routine inspection, the mortuary inspector completes a checklist indicating he/she has checked the overall physical condition of the homes, the status of licensed and unlicensed employees, advertising and stationery, elevators, restrooms, business agreement forms, and preparation rooms.

Although not on the checklist, one inspector told LB&FC staff that he also checks:

- licenses to make sure that they are current and to ensure that the funeral directors licensed by the Board to work at that location are the ones actually practicing there;
- the funeral home's price lists and statements of goods and services;
- a sample of at-need and pre-need contracts;
- possible "bait and switch" tactics on price lists; and
- the general price list against the casket selection in the showroom.

Although the inspection checklist does not require an examination of business records, a few years ago BP&OA inspectors began to review pre-need burial contracts as part of some inspections. At the January 1990 Board meeting, the Board requested that the administrative assistant send a memorandum to the Law Enforcement Division stating that pre-need burial contracts are confidential and the inspectors should not review them when performing their inspections. This memorandum also requested the legal office to provide information about inspecting pre-need burial contracts. The legal office's response was that the Board did not have clear statutory or regulatory authority to collect information about the amount of funds in prepaid burial contracts and information about insurance-funded pre-need contracts.

More recently inspectors have again been examining pre-need contracts. In spring 1993 the Board's prosecutor developed a pre-need auditing manual to be used by the BP&OA investigators and inspectors to conduct pre-need audits resulting from complaints. These audits are restricted to the contracts and pre-need records maintained by the funeral establishments and do not include a review of the trust fund accounts maintained by banking institutions. The prosecutor provides guidance to the investigators/inspectors on how many pre-need contracts should be audited in a particular situation. Although several licensees have questioned the authority of the inspectors and investigators to review pre-need files, no one has yet refused access to their records.

Frequency and Timeliness of Funeral Home Inspections

Frequency of Inspections. Funeral home inspections are not conducted on a systematic basis. During calendar year 1991 the inspectors conducted 684 funeral home inspections. In calendar year 1992, this number increased to 969. These numbers do not, however, represent an unduplicated count of inspections of separate funeral homes. The numbers may include both compliance inspections of funeral homes and follow-up or re-inspections where violations are found. Therefore, the actual number of homes inspected in these years may be something less than 684 and 969.

BP&OA records do not provide a breakdown of compliance versus follow-up inspections. It is safe to assume, however, that the BP&OA's mortuary inspectors are not inspecting all funeral homes on an annual basis. The number of homes inspected in 1991 and 1992 (as opposed to the number of inspections conducted) is less than 33 percent in 1991 and less than 50 percent in 1992. Moreover, inspection files show that some homes have not been inspected for several years while others have received multiple inspections and reinspections.

To assess the frequency of funeral home inspections, LB&FC staff examined inspection histories for a sample of 416 funeral homes selected randomly from throughout the state. This sample represents approximately 22 percent of all funeral establishments in Pennsylvania. We reviewed records for homes in all four BP&OA regions to determine the year of last inspection.

The results of our review are shown on Table 14. As shown on this table, 214 homes or about one-half of the sample had been inspected during calendar year 1992 or the first two months of 1993. A total of 169 homes, or about 40 percent, were last inspected during 1990 or 1991 and 22, or about 5 percent, during 1988 or 1989. Eleven homes in the sample had not been inspected since at least 1987.

The Board's administrative assistant also reviewed inspection records and found a similar pattern. Her review used calendar year 1989 as a cut-off point and attempted to identify homes which had not been inspected since at least 1989. The administrative assistant found 173 homes in this category, 110 operated by sole proprietors and 63 by business class licensees. Of this number, 35 percent (60 funeral homes) had not been inspected since at least 1986. Several factors contribute to this sporadic inspection pattern.

Inspection Planning and Scheduling Is Inadequate. Inspections are not conducted according to a formal plan or schedule. Instead, inspectors use a computer printout that lists licensees by county and community, and shows the date of a licensee's last inspection. After selecting a geographical area or municipality in which to work, the inspectors identify for inspection those establishments which have not received a recent inspection. The inspection program does not, however, have a systematic process for ensuring that all funeral homes within a given county or BP&OA region are inspected over a given period of time. Also contributing to the inspection frequency problem is the fact that funeral homes operated by sole proprietors were, until recently, not specifically identified on the computer-generated inspection list.

Basic Program Management Information Is Not Maintained. Inspection reports and basic management information on the program are not readily available. The BP&OA and the Board do not generate management information reports which monitor and track their performance against the annual inspection program objective.

The Inspection Function Is Understaffed and When Vacancies Occur, They Are Difficult to Fill. Given the annual inspection objective, the inspection program appears understaffed. The BP&OA Law Enforcement Division complement is authorized for three

RECOMMENDATIONS

1. The General Assembly should consider amending the Funeral Director Law to:
 - specifically define the purpose and scope of the funeral home inspection program,
 - specify the frequency of inspections (consideration should be given to a biennial rather than annual requirement),
 - delete the requirement that funeral homes must be inspected by licensed funeral directors with ten years experience, and
 - clarify the authority of inspectors to examine licensees' business records.
2. The Board should promulgate regulations for the funeral home inspection program.
3. The BP&OA's Law Enforcement Division should institute a funeral home inspection plan and scheduling process, including management information reports capable of providing information on the inspection status and date of last inspection of all funeral establishments, by region.

FINDING P

*THE FUNERAL DIRECTOR AND FUNERAL OWNERSHIP LICENSING
STRUCTURE ADMINISTERED BY THE BOARD IS UNNECESSARILY
COMPLEX AND RESTRICTIVE*

SUMMARY

The Funeral Director Law provides for various forms of ownership of funeral directing businesses. As required by the law, the Board issues funeral director and funeral supervisor licenses and seven other separate ownership licenses based on business or ownership type. This system is unnecessarily complex and includes provisions that appear to restrict and control the start-up of new funeral businesses. Most states license only the individual (funeral director or mortician) and the facility (funeral home or mortuary).

DISCUSSION

Description of the Current Ownership Licensing Structure

The Funeral Director Law provides detailed information and conditions for operating funeral homes in Pennsylvania under the following types of business ownership licenses:^{1/}

Funeral Restricted Corporation	Funeral Corporation
Funeral Branch Office	("Pre-1935")
Funeral Widow	Funeral Partnership
Funeral Professional Corporation	Funeral Estate

These license types and associated requirements and restrictions are summarized on Exhibit 12.

The current structure of seven separate funeral ownership licenses has evolved in a piecemeal fashion. An attorney who has had a long-term involvement with the Funeral Director Law and the Funeral Directors Board has characterized some of these provisions

^{1/}The law does not, however, provide for licensure of sole proprietorships as a business or ownership type. See Finding J.

as "historical accidents." The following is a brief chronology and reported rationale for the various ownership provisions of the law.

- Pre-1935 Corporations (No specific statutory provision^{2/}) These business licenses are formed from existing pre-1935 corporation licenses which may be owned by anyone (there is no requirement for the owner to be a licensed funeral director). The number of these licenses is limited to those in existence as of 1935.

Prior to 1935, both individuals and corporations could be licensed to practice funeral directing in Pennsylvania. During the Depression, the Legislature amended the law to restrict the licensure of funeral directors to individuals. At that time, approximately 75 corporations were licensed in the Commonwealth. Further, each of these may have had several branches since there were no restrictions on the number of branches that could be operated by a funeral director. These corporations sued in an attempt to retain their licensure. In 1935 the court ruled in their favor. These businesses are now known as the "pre-1935 corporations."

- Funeral Widow's Licenses (63 P.S. §479.8(a)) Widows or widowers may be granted licenses to operate the business of the deceased spouse (funeral director) provided they do not remarry and the business is supervised by a licensed funeral director.

In the same time frame that the pre-1935 corporations were established, the General Assembly created a widow's license

^{2/}The Funeral Director Law does not have a provision which specifically defines pre-1935 corporations. These corporations have generally been "grandfathered" into the law and are specifically addressed in Board regulations, 49 Pa. Code §§ 13.121 - 13.123.

EXHIBIT 12. REQUIREMENTS AND RESTRICTIONS FOR FUNERAL BUSINESS LICENSES ISSUED BY THE BOARD

<u>License Type/Cite</u>	<u>License Requirements</u>	<u>License Restrictions</u>
Professional Corporation 63 P.S. §479.8(d) 49 Pa. Code §§13.131 - 13.135	<ul style="list-style-type: none"> - Must be incorporated pursuant to the Professional Corporation Law by one or more licensed funeral directors specifically for conducting a funeral directing practice. - The name must contain the name of one or more shareholders or of a predecessor funeral establishment. - Each place of business must have a licensed funeral director as a full-time supervisor. 	<ul style="list-style-type: none"> - May not own stock or property interest in any other funeral establishment, except a branch.
Restricted Corporate 63 P.S. §479.8(b) 49 Pa. Code §§13.141 - 13.144	<ul style="list-style-type: none"> - Business must be incorporated pursuant to the Business Corporation Law by one or more funeral directors. - One or more of its principal corporate officers must be a licensed funeral director and a member of the board of directors of the corporation. - All shareholders must be licensed funeral directors or an immediate family member of a licensed funeral director or of a deceased funeral director who was a shareholder in the corporation at death. - Corporation must file a registry statement with the corporate tax returns and pay all taxes. - Name of corporation must contain the name or last name of one or more of the licensed shareholders or the name of a predecessor establishment. - Each place of business must be registered with the Board and have a licensed funeral director to serve as a full-time supervisor. 	<ul style="list-style-type: none"> - Corporation may not engage in any other business. - Licensed funeral director is not eligible to apply for more than one restricted corporate license or own shares in more than one restricted corporation or have a proprietary interest in any other funeral branch.
Branch 63 P.S. §479.8(e) 49 Pa. Code §§13.112, 13.113	<ul style="list-style-type: none"> - License is held by licensee authorized to conduct funeral directing practice either as an individual, partnership, professional corporation, or restricted business. - Must have a licensed funeral director as supervisor. - Branch location must have the same facilities as principal place of business and comply with law and regulations. 	<ul style="list-style-type: none"> - Each entity may have only one branch location.

EXHIBIT 12 (CONTINUED)

<u>License Type/Cite</u>	<u>License Requirements</u>	<u>License Restrictions</u>
Estate/Widows	- A licensee's widow can receive a license without time limitation if widow does not remarry.	
63 P.S. §479.8(a)	- The licensee's estate can receive a license.	- Estate license is a three-year license.
49 Pa. Code §§13.151 - 13.159	- Must appoint a licensed funeral director as supervisor.	
Partnership	- Must have a partnership agreement.	
63 P.S. §479.8(a)		
49 Pa. Code §13.109		
Pre-1935 Corporation	- Must have a licensed funeral director for a supervisor.	- Only existing pre-1935 business corporation licenses and pre-1935 branch licensees will be renewed. No original licenses will be issued to these corporations.
49 Pa. Code §§13.121 - 13.123		

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a/Licensed funeral directors owning shares of more than one professional corporation prior to February 1977 may maintain ownership of the shares.

Source: Developed by LHSFC staff from the Funeral Director Law and Board regulations.

to protect a widow when her spouse, a licensed funeral director, died. According to an attorney familiar with the development of this amendment, in many cases the funeral home was the largest home in town and constructed in a way that would make it difficult for the widow to sell it for use other than as a funeral home. Therefore, the widow was allowed to retain the home by hiring a licensed funeral director to supervise the business.

- Funeral Estate Licenses (63 P.S. §479.8(a)) Estates of deceased funeral directors may be granted licenses to operate for three years provided the home is under the supervision of a licensed funeral director. This license category was also created during the same time frame as the widow's license to allow estates to likewise dispose of a unique piece of property within a reasonable period of time.
- Funeral Professional Corporations (63 P.S. §479.8(d)) Professional corporations are licensed separately by the Board as businesses and are formed by licensed funeral directors to take advantage of tax and liability laws. The formation of professional corporations conforms to the requirements of the professional corporation law; e.g., the shareholders are members of the profession in which the corporation practices.

In the early 1960s, Pennsylvania enacted the Professional Corporation Law. The purpose of the law was to allow professional organizations to take advantage of certain federal corporate tax provisions. The Board then began issuing licenses for professional corporations in addition to the funeral director licenses issued to individuals. The Pennsylvania Attorney General's Office issued an opinion stating that the Board did not have the authority to license professional corporations.

In the meantime some funeral directors acquired multiple licensure by applying for licenses in a variety of different but similar names (for example, as John Doe Funeral Home, J.D. Funeral Home, and J. Doe Funeral Home, etc.). The Attorney General attempted to enforce the opinion, and approximately 50 funeral directors brought suit to maintain their licenses as professional corporations. The parties negotiated a settlement which resulted in an amendment to the Funeral Director Law (1) authorizing the Board to issue corporate licenses, (2) grandfathering in the existing multiple ownership (ownership of more than one corporation prior to 1977 may continue) and (3) authorizing the establishment of restricted business corporations.

- Funeral Restricted Business Corporations (63 P.S. §479.8(b)) Restricted corporate licenses may be granted to businesses whose shareholders are not necessarily funeral directors. Shareholders may be "the members of the immediate family of a licensed funeral director or a deceased licensed funeral director who was a shareholder in the corporation at death." Family members include spouse, children, grandchildren, or trustee or custodian who holds shares for the benefit of such family member.

As noted above, the restricted business corporations were part of a negotiated amendment to the Funeral Director Law in the early 1970s. This form of licensure established, to a certain extent, parity with those who owned pre-1935 corporations in that persons other than funeral directors (i.e., a close relative) could maintain ownership of a restricted business corporation and the stock of a restricted business corporation.

- Funeral Partnership (63 P.S. §479.8(a)) Two or more individuals may form a partnership to operate from one place of business.

- Funeral Branch Office (63 P.S. §479.8(e)) Licensees are authorized to conduct a funeral directing practice at one principal place and no more than one branch. The branch must have a licensed funeral director as a full-time supervisor and meet the other requirements of the act and regulations, e.g., a branch must have a preparation room.

Effect of the Current Licensing Structure

In Pennsylvania, as nationally, the funeral industry tends to be made up of family-owned and operated businesses serving specific locales for long periods of time. Businesses are often handed down from generation to generation. The ownership provisions in the Funeral Director Law tend to perpetuate this arrangement by limiting the entry of competitors into the industry.

Under the current licensing system, only licensed funeral directors may open a new funeral home. Unlicensed persons are generally limited in their ownership opportunities. For example, anyone can own a "pre-1935 corporation" but there are only 76 available.^{3/} In other cases, certain family members, although unlicensed, can obtain ownership of a funeral business through a widow(er)'s license, estate license, or restricted business corporation license.

In all of these instances, the unlicensed owner must employ a licensed funeral director to operate the funeral establishment. However, unlicensed owners are not required to have any special skill, training, or knowledge.

In short, the system appears relatively closed. Newly established or newly licensed businesses must be owned by licensees.

^{3/}As of July 8, 1993, 61 of the 76 pre-1935 corporations were actively licensed.

To be licensed as a funeral director, one must identify a funeral home at which employment is already arranged. Thus, entry into the profession can only be through an existing business while those already in the business can establish ownership of additional funeral homes through transfer of business licenses to family members.

During the audit, the Board's former chief prosecutor commented on this system:

Under the present system, there are substantial inequities. However, if equity is achieved by permitting anyone to own such a business, there would be major changes in the industry. Specifically, chain operations would enter into competition with the existing individual vendors. While this type of competition might be advantageous to the consumers (just as K-Mart and Walmart are), the high-priced, small-time established vendors could expect even greater competitive pressure and an eventual winnowing of the uncompetitive enterprises.⁴

There are also internal inconsistencies in the construction of the Funeral Director Law with respect to its ownership licensing provisions. While the act generally restricts ownership of a funeral home to licensed funeral directors, it also authorizes unlicensed persons to own the homes in certain cases. However, although unlicensed persons can own a funeral home, excepting pre-1935 corporations, they must be related to a funeral director. Thus, while ownership is not restricted solely to licensees it is not generally available to the public.

⁴While small independently-owned homes still predominate nationwide, there is a trend toward consolidation and acquisition in the funeral service industry. Also vertical integration of the industry or ownership of several components of the industry by one firm, is becoming more prevalent. For example, the largest operator of funeral homes and cemeteries in North America, Service Corporation International, operates 674 funeral homes and 176 cemeteries in 39 states, the District of Columbia, and Canada (including one cemetery and two funeral homes in Pennsylvania). Nevertheless, a report by Business Trend Analysts, Inc., estimates that fewer than three percent of all funeral homes in the United States are owned by chains.

Since the Funeral Director Law allows certain nonlicensees to own funeral homes, it differs from the Professional Corporation Law, which generally requires professional businesses operated as corporations to be owned by members of the profession. Since the Funeral Director Law generally restricts ownership to funeral directors, it also differs from statutes that govern a number of other occupations regulated by the BP&OA which allow ownership by nonlicensees. Those statutes define ownership forms and require that services be delivered by a licensed professional but do not restrict ownership of the business to licensees. For example, the various laws authorize anyone to own a business engaging in the practice of barbering, cosmetology, auctioneering, and pharmacy as long as the professional services are provided by a person licensed by the state.

It also appears that the general intent of the Funeral Director Law was to restrict ownership of funeral homes to one primary location and one branch location. Ownership of more than one home has occurred, however, through the issuance of restricted corporation licenses. Although the act states that "no licensed funeral director shall be eligible to apply for more than one restricted corporate license or own shares in more than one restricted corporation," [emphasis added] the Board has granted more than one restricted corporate license upon multiple applications by the same funeral director.

Licensing of Funeral Practice and Ownership in Other States

Pennsylvania's licensing structure based on type of ownership or type of business appears to be unique among the states. Most states simply license the individual (e.g., as a funeral director, mortician, embalmer) and the location or physical facility (i.e., the funeral home).

Thirty-five states responded to an LB&FC staff survey concerning funeral industry licensing and regulations. None of the states reported a licensing structure based on the form of ownership like Pennsylvania's. A brief description of funeral business licensure from a sample of these states is provided in Appendix M. As shown, most of these states allow nonfuneral directors to own funeral homes so long as a licensed funeral director supervises, manages, or operates the establishment. The establishment is licensed separately.

RECOMMENDATIONS

1. *The General Assembly should consider amending the Funeral Director Law to simplify the licensing structure. The basis of licensure should be the individual (i.e., funeral director) and the establishment (i.e., the funeral home) rather than the form of ownership.*
2. *The General Assembly should consider amending the Funeral Director Law to authorize ownership of funeral homes by any person, association, partnership, corporation, or other organization as long as the funeral home is supervised and funeral services are provided by a licensed funeral director.*

FINDING Q

THE REQUIREMENT THAT EVERY FUNERAL HOME MUST MAINTAIN A SEPARATE PREPARATION ROOM APPEARS OVERLY RESTRICTIVE

SUMMARY

Funeral homes must, by law, include a preparation room containing instruments and supplies necessary for the preparation and embalming of human remains. The State Board of Funeral Directors has promulgated regulations which establish extensive facility and equipment requirements for preparation rooms. During this audit, Board members, licensees, and the Pennsylvania Funeral Directors Association (PFDA) stated that this requirement is burdensome and unnecessary. They also noted that maintaining separate preparation rooms results in added costs for funeral directors which result in higher costs for consumers. According to the PFDA, the cost to construct and equip a preparation room to meet Board standards is \$40,000 to \$50,000.

Almost all parties who commented on the separate preparation room requirement suggested eliminating it from law and specifically authorizing the use of centralized embalming facilities. Centralized embalming facilities would enable the industry to more easily and economically comply with an array of federal, state, and local laws and regulations governing hazardous waste disposal and occupational safety. The use of centralized facilities would appear to be particularly feasible in urban and suburban areas.

DISCUSSION

The Funeral Director Law, 63 P.S. §479.7, requires that every establishment in which the profession of funeral directing is carried on shall include a preparation room, containing instruments and supplies necessary for the preparation and embalming of human remains.^{1/} According to the law, preparation rooms are to be constructed in accordance with sanitary standards prescribed by the Board. The Board's regulations establish extensive facility and equipment requirements for preparation rooms. According to the PFDA, the cost to construct and equip a preparation room to meet these requirements is \$40,000 to \$50,000.

^{1/}The law does not, however, restrict or require a funeral director to embalm in his/her own facility.

Board members, licensees and the PFDA told us that this requirement is burdensome and unnecessary. They also noted that maintaining separate preparation rooms results in added costs for funeral directors which result in higher costs for consumers. The requirement that each branch location include a separate preparation room is of particular concern. In commenting on this subject, one Board member stated:

There are a number of frivolous requirements in the existing law which translate into costs for the Funeral Director which must be passed on to consumers . . . every Funeral Home in the State must have a "Preparation Room" even though a Funeral Director may own more than one Funeral Home and not use the Prep. room in each. This is an added cost passed on to Consumers. There is no provision in the law for several Funeral Directors in a community to use the same Preparation room, an even greater cost saving to be realized if this were possible.

Licensees who commented on this subject also frequently pointed out that the requirement is not in the best interests of consumers. One licensee commented that it creates needless expense and creates a waste of inspection resources.

Funeral homes which do their embalming in one funeral home should not be required to maintain embalming rooms in other funeral homes which they own, but do not embalm in. This is more true today with the various OSHA laws. It is a needless expense which the consumer must pay for and a waste of the inspector's time to inspect by the state board. OSHA does not require embalming rooms which are not used to be outfitted to comply with the various regulations.

Almost all parties who commented on the separate preparation room requirement suggested eliminating it from law and specifically authorizing the use of centralized embalming facilities.

While centralized embalming facilities are not prohibited by the law, they are not commonly used because each funeral home must maintain its own preparation room. Preparation rooms are subject

to an increasing array of federal, state, and local laws and regulations governing hazardous waste disposal and protection of industry personnel from toxic material handling dangers.^{2/} Centralized embalming facilities owned and operated by licensed funeral directors would enable the industry to more easily and economically comply with laws and regulations governing occupational safety and waste disposal practices. The use of centralized facilities would appear to be particularly feasible in urban and suburban areas.

Twelve of the 35 states that responded to an LB&FC audit survey reported that they do not require every funeral home to maintain a separate preparation room. Another state allows firms maintaining more than one facility under the same ownership to centralize preparation room facilities and activities.

RECOMMENDATION

1. *The General Assembly should consider amending the Funeral Director Law to eliminate the separate preparation room requirement and specifically authorize the use of centralized embalming facilities.*

^{2/}A 1990 study by the PA Department of Environmental Resources (DER) found that the Pennsylvania funeral industry disposes of 32 tons of biohazardous waste each year. This is a conservative estimate since the DER study apparently did not include waste disposal by funeral homes operated by 816 sole proprietors. See Finding J for a discussion of the problem associated with identifying sole proprietorships.

APPENDIX D. CHANGES NEEDED IN THE FUNERAL DIRECTOR LAW AS
IDENTIFIED BY THE FUNERAL DIRECTORS BOARD

1. That there be a three-year limit on widow licenses and estate licenses.
2. That one morgue would suffice for a number of funeral homes in a given area at the main location.
3. That there be no limit on funeral establishments that a person owns and also that a centralized preparation room can be utilized.
4. That continuing education be a part of the law.
5. That the Board consider some sort of audit in the pre-need statutes.
6. That the requirement for supervisors for branches be eliminated.
7. That uniform terminology be used--e.g., the phrase intern.
8. That clear definition of funeral directing and what a funeral service is be developed. That "unauthorized practice" be defined.
9. That the physical property of a funeral home be licensed.
10. That what happens to the records after a funeral home closes be designated in law.

RESPONSE OF THE STATE BOARD OF FUNERAL DIRECTORS

COMMONWEALTH OF PENNSYLVANIA

To The

Performance Audit Presented To The
Legislative Budget And Finance Committee

January, 1994

The State Board of Funeral Directors expresses sincere appreciation to the staff of the Legislative Budget and Finance Committee for the excellent work done in the recent Performance Audit of this Board. The report, which has been submitted for review and possible action, is very thorough, extremely well written, fully documented, and offers recommendations which we believe are greatly needed in this Commonwealth. As members of this Board we welcome the scrutiny which this report will generate. We anticipate our participation in some of the discussions which undoubtedly will take place. We applaud one conclusion of the Audit team in the recommendations for the Legislature to consider amending the Funeral Director Law so that it speaks more directly to today's needs, and more clearly addresses issues of consumer protection. This Board has gone on record for the past several years, requesting that this Law be revisited by the Legislature to bring it in line with modern practices in the industry and broaden its influence upon a larger industry than the licensed funeral director. We anxiously await word from the Legislative Budget and Finance Committee as it moves through its process in considering the results of this

this Board, in the best interest of the general public.

We acknowledge those areas in the Audit in which this Board is lifted up for criticism of one sort or another in not meeting the expectations of others or, in some cases, not fulfilling the intent of the law and/or regulations for this industry. We believe, however, we have acted on the advice of counsel in almost all situations, and we have sometimes chosen to expedite solutions to presented difficulties in the quickest fashion. For instance, it is a long, drawn out process to promulgate a regulation. When the FTC Funeral Rule Regulations were enacted, the Board contacted every Funeral Director informing them of this event and urged compliance, noting that FTC rules must be followed. The Board also added to the approval of Funeral Goods and Service contracts, the requirement that FTC rules were followed. It is acknowledged that Policy enactments are a poor substitute for Regulations, but they have proved useful at times. What is drastically needed, as concluded by this Audit team and highly affirmed by this Board, is a new Funeral Law.

FINDINGS AND RECOMMENDATIONS

The Findings and Recommendations contained in the Audit of the State Board of Funeral Directors are extremely important to consider. The Funeral industry is in a constant state of change. There is a growing market for pre-need and/or pre-paid funerals, the regulation of which is woefully lacking at the present time.

There are persons engaged in questionable practices within this industry. The existing Funeral Law is very antiquated, often ambiguous, lacking in consumer protection in several vital areas, imposes upon funeral directors and funeral homes requirements which add to the cost of funerals, but do not really benefit or protect the general public. It is the firm belief of this Board that regulations in this industry are absolutely necessary for the protection of the general public, that such regulation should extend to a broader segment of the industry (cemeteries, crematories, third party sellers of funeral goods and services), and that the drafting of a new and expanded Law should be accomplished as quickly as possible. We urge, however, that the entire Law be examined in one legislative effort rather than attempt to revise, change, add to, or delete from the existing Law on a piece meal basis.

In regard to those Findings and Recommendations referred to in the Audit, the State Board makes the following affirmations:

- A. The finding and the Recommendation for a comprehensive update and revision of the Funeral Director Law is highly affirmed.
- B. The need for disseminating information about the Funeral Board and the Funeral Director Law is affirmed. We applaud the proposal to amend the Funeral Director Law to require that public members constitute a majority on a regulatory Board. We also affirm the need to establish new terms and term limits.

It is the intention of the present Board to develop public information materials for distribution and to improve its writing and distribution of a periodic newsletter.

- C & D. Complaints against Funeral Directors are taken seriously by this Board. It is the opinion of the

Board that there have been difficulties in our prosecutorial activities, even before the Lyness case emerged and changed the method of Board involvement in the process. Some of this difficulty has been due to the number of changes in prosecutors assigned to the Board. Some difficulties have occurred when, in the opinion of the Board, inadequate investigation took place. We recognize the ambiguities in the Funeral Director Law which makes it difficult to prosecute on certain types of complaints. We hope a newly devised Law will correct this deficiency. This Board has delayed action of making use of the screening panel concept until we are able to review work now being done on this by another Board. This action was taken on advice of counsel.

- E. The Board fully agrees that more work needs to be done to clearly define professional responsibilities, recognizing, however, the difficulty which might be encountered in applying such definitions to the existing law. A thorough review of Regulations in this regard will be undertaken immediately. We will also begin to develop an "elements manual," which might be applied to unprofessional conduct activities.
- F. The Board affirms the Finding on the difficulty to adjudicate many unlicensed practice complaints. The Board also highly affirms the recommended solution to this serious problem, as put forth by the Audit staff. We would urge, however, that remedial provisions be presented as an entirely new Law for an expanded industry.
- G & H. The Funeral Board accepts the Finding concerning the FTC ruling. The Board will begin right way to address this matter by a careful review and possible revision of existing regulations in the expectation of correcting any omission which might be found.
- I. As noted before, the Board will begin right away to develop public information materials for consumer information and protection purposes. The Board accepts this Finding and affirms the Recommendation.
- J. The Auditors are correct in stating that the existing Funeral Director Law does not provide for the licensing of sole proprietorships. The general public would be much better served if such establishments were licensed. The section of the Funeral Director Law having to do with types of business establishments is very ambiguous, inconsistent, and often confusing to the general public, as well as to some within the

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profession. There are far greater reasons than revenue enhancement to change the statute on this matter. The Board would welcome such changes with rejoicing.

- K. The Finding regarding inspection of funeral establishments is a matter of serious concern to this Board. The oversight of inspectors and their routine is out of the hands of this Board. The Board will, however, begin work on regulations for the funeral home inspection program. We urge that the Funeral Director Law be changed to clarify the whole matter of funeral home inspections so that more appropriate regulations can be promulgated.
- L. The Board acknowledges the apparent lax role it has played in monitoring the resident internship program. Requirements are established for the training of preceptors (each five years), with content input for the internship. Following that intern through the process, with the exception of periodic reports is not accomplished. Neither has the Board adopted a comprehensive outline of training which should be included in the internship, with the exception of broad categories. This matter will be placed on an early agenda of the Board to review every aspect of the internship program and to set up a more responsible method of monitoring it.
- M. Changing the fee structure under the Funeral Director Law comes to the attention of the Board through the staff of the Bureau of Professional and Occupational Affairs. The advice of this agency is followed in setting the fees.
- N. The Board agrees that waivers to enforcement of regulations is inappropriate. Although each incident has been considered on the merits of the request, it does give the appearance of flaunting regulations. Serious discussion will take place on this activity in a full review of all regulations. The Board will also attempt to write policy briefs on granting of waivers in the future. An attempt will also be made to catalogue any waivers which might have been granted in the past.
- O. The Board has no opinion to express on making the Funeral Director Law consistent with other Licensing board Statutes. The Board sees no problem with this at this time.
- P. It has already been stated that the Board feels a new Funeral Law is required. Such a new law should

definitely clarify the funeral director and funeral ownership licensing structure. The Board believes some real advantage can accrue to the general public if this section of the law can be modified considerably.

- Q. The Board agrees with the Finding on the restrictive nature of requiring a preparation room for every funeral home. Not every funeral home needs a preparation room as required by existing law. A centralized embalming facility makes a lot more sense, according to the way this business is conducted today. This is a matter which deserves serious consideration.
- R. The Board agrees that continuing education should be required for those licensees in this profession. Joint determination of the content of a broad continuing education program should be developed cooperatively between the Board, the schools of mortuary science, and the major professional organization in the state.

CONCERNING PRE-NEED

The Performance Audit of the State Board of Funeral Directors included a separate document showing an evaluation of pre-need funeral regulation in Pennsylvania. The Board concurs with the finding of the Audit and urges the Legislature to do something about this important growth industry as quickly as possible. Inadequate, ambiguous, and inconsistent regulations of pre-need sales poses a real threat to an unsuspecting society. The longer an inadequately regulated business venture is permitted to continue, the more difficult it will be to bring it under regulation later. Already, evidence shows the magnitude of this venture in terms of revenue generated to the funeral industry. Evidence also abounds that some unscrupulous persons have been taking advantage of innocent people.

Although the State Board of Funeral Directors agrees that

new laws must be written to protect the public in regard to pre-need funeral sales, the Board does not believe the proposed legislation, identified as HOUSE BILL NO. 2347 (Printer's No. 2916) is the best way to accomplish this. This BILL stipulates it is an ACT "providing for the regulation of pre-need funeral and burial contracts; providing for powers and duties of the Office of Attorney General, Bureau of Consumer Protection; creating funds; imposing penalties; and making repeals." (p.1) It is recognized that this proposed legislation is very similar to a Model Law developed by the American Association of Retired Persons. It is also recognized that this Bill has been endorsed by the Pennsylvania Funeral Directors Association (PFDA), the major professional organization for funeral directors in the Commonwealth.

The State Board of Funeral Directors expresses its appreciation for the good work these groups have accomplished in bringing this matter to the attention of Legislators. However, it is the opinion of members of the State Board of Funeral Directors that to adopt House Bill No 2347 without considering its important aspects along with a complete review of the existing Funeral Director Law would be a serious mistake. To do so has the effect of addressing the needs of this important industry on a piece meal basis only. It also adds to a bureaucratic maze to which the funeral industry must relate by creating a separate regulatory Board set up for the purpose of addressing pre-need funeral and burial contracts, and lodges this

responsibility under the auspices of the Bureau of Consumer Protection in the Office of the Attorney General. It is the feeling of this Board that there are many aspects of the existing law which need to be changed and much of pre-need which needs to be developed. We believe it will be far better for the industry and the general public to consider all aspects of this industry in one piece of legislation, written for today's time, today's industry, and strong enough to take us well into the next century.

CONCLUDING REMARKS

The State Board of Funeral Directors thanks the Legislative Budget and Finance Committee for this opportunity to respond to the Performance Audit before it is released to the general public. We look forward to all that might transpire for this industry as you continue to work through the Findings and Recommendations contained in this excellent document.

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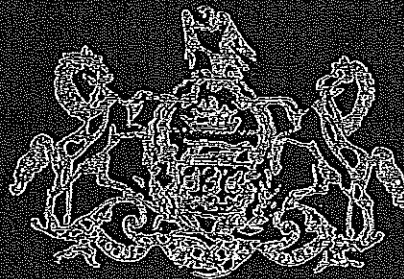
Legislative Budget and Finance Committee

A JOINT COMMITTEE OF THE PENNSYLVANIA GENERAL ASSEMBLY

PERFORMANCE AUDIT

State Board of Funeral Directors (Volume II)

An Evaluation of Pre-Need Funeral Regulation in Pennsylvania



OFFICES: ROOM 400, FINANCE BUILDING, HARRISBURG--TEL: (717) 763-1600
MAILING ADDRESS: P.O. BOX 6737, HARRISBURG, PA 17105-0737

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Legislative Budget and Finance Committee

A JOINT COMMITTEE OF THE PENNSYLVANIA GENERAL ASSEMBLY

OFFICES: Room 400 • Finance Building • Harrisburg • Tel: (717) 783-1600 • Facsimile: (717) 787-5487

MAILING ADDRESS: P.O. Box 8737 • Harrisburg, PA 17105-8737

EXECUTIVE DIRECTOR
Phillip R. Durgin

CHIEF ANALYST
John H. Rowe, Jr.

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